IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

WP(C).No. 31220 of 2006(N)

IA 1819/2006 IN AS.62/2006 of SUB COURT, QUILANDY
OS.153/2001 of MUNSIFF COURT, QUILANDY

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PETITIONER:
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1. KIZHAKKE CHALIL THADATHIL SIJI,
   AGED 27 YEARS, D/O. KUNHIKANNAN, NADERI AMSOM,
   KURICHIKKARA DESOM, KOYILANDY, KOZHIKODE.

2. MELECHALIL SANKARAN, AGED 38,
   S/O. PACHEN, BUSINESS, NADERI AMSOM,
   KURICHIKKARA DESOM, KOYILANDY, KOZHIKODE.

BY ADV. SRI.NIRMAL. S

RESPONDENTS:
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1. PARADA PRAMOD KUMAR,
   S/O. AMMUKUTTY AMMA, NADERI AMSOM, KOZHIKODE.

2. MAYAPURATHU RAMAKRISHNAN,S/O.KUNHIRAMAN,
   AGED 48, NADERI AMSOM, MUZHIKUMEETHAL DESOM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

W.P(C).No.31220 OF 2006

Dated this the 24th day of November, 2006

JUDGMENT

This writ petition is filed challenging an order passed on an application under Order 41 Rule 5, filed by the writ petitioner, in his appeal against dismissal of a claim made under Order 21 Rule 58.

2. Having regard to the nature of the order that is being passed and because of the pendency of the first appeal before the court below, I desist from adverting much to the facts in this judgment.

3. It would be sufficient to notice that the claim petition was dismissed after adjudication on merits. But it was held that the claim was designedly belated and that the writ petitioner had not shown that his assignor had come into possession of the property.

4. The appellate court has admitted the first appeal of the writ petitioner, but has issued the impugned orders Exts.P3 and P4 refusing to grant stay. In doing so, the appellate court has adverted to the facts to such extent as was required for exercising discretion under Order 41 Rule 5. The impugned orders show the reasons for the discretion exercised. The learned Judge was right in saying that substantial injury would not be caused at the present stage even if an order of stay is not granted since the sale is only at the stage of proclamation. Learned Judge had also rightly extended to the writ petitioner an opportunity to take steps for early disposal of the appeal on merits. Under such circumstances, I do not find any ground to interfere with discretionary orders Exts.P3 and P4, that too in exercise of authority under Article 227 of the Constitution of India since I do not find any miscarriage of justice resulting out of the said orders.

5. Under the aforesaid circumstances, while preserving the right of the petitioner to move the court below for early disposal of the appeals on merits and by noticing that the interlocutory

relief was refused on ground that substantial loss would not be caused since the sale is only at the stage of proclamation, this writ petition is dismissed without entering on merits, however, clarifying that any consideration of the appeals or further interlocutory applications, if any, by the writ petitioner during course of the said appeals, will be untrammelled by anything stated in this judgment.

Upon pronouncement of this judgment, learned counsel for the writ petitioner urged relying on Order 21 Rule 59 that his client may be left with liberty to move the lower appellate court for an interlocutory order in view of the changed circumstance and the execution proceedings having been posted for conducting the sale on 28.11.2006. It is clarified that this judgment does not affect any such entitlement of the writ petitioner.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.